

UNITED STATES DEPARTMENT OF AGRICULTURE

Farm Service Agency
Washington, DC 20250

Notice LP-1816

For: State and County Offices

**Revised Uniform Commercial Code (UCC) Provisions
and the Effect on Marketing Assistance Loans**

Approved by: Acting Deputy Administrator, Farm Programs



1 Overview

A

Background

Revisions to UCC, Article 9, about secured transactions have been adopted in most States. The effective date of the new law, where currently adopted, was July 1, 2001.

B

Purpose

This notice provides:

- information in addition to that provided in Notice LP-1812 about how the revision affects CCC marketing assistance loans
- guidance about actions necessary during transition by States to electronic UCC filing systems.

Disposal Date

June 1, 2002

Distribution

State Offices; State Offices relay to County Offices

8-23-01

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2 Transition to Electronic Centralized UCC Filing Systems

A

Filing UCC Forms

The revised UCC, Article 9 affects how CCC perfects and liquidates its security interest in collateral securing marketing assistance loans. One of the key changes includes, for those States without a pre-existing centralized filing system, centralizing the electronic filing of most security interests. However, some Secretaries of State are transitioning to a centralized electronic filing system by:

- requiring UCC forms to be mailed or FAXed to the central filing site
- receiving UCC forms at the central filing site without:
 - time and date stamping or logging each UCC as it is received
 - providing prompt verification to the sender that the UCC was received
- data loading and thereby, recording, UCC forms to an electronic system as time permits.

Because CCC must have the sole security interest in grain used to secure marketing assistance loans, the transition system in some states places CCC security interests at risk.

B

Clarifying 8-LP Filing and Recording Policy

8-LP, paragraph 423 provides that County Offices may:

- disburse loan proceeds after appropriate documents have been **filed**
- not delay disbursements until the applicable form has been **recorded** by the proper official.

To file UCC forms in the centralized, electronic filing environment, **filing** a UCC document is further defined as the following:

- sending the appropriate UCC document by hand delivery, mail, FAX, or electronic transmission to the recording official
 - receipt of written verification of the time and date when the UCC document was received by the recording official.
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2 Transition to Centralized UCC Filing Systems (Continued)

C

County Office Action

County Offices shall:

- not disburse loans without written verification of the UCC filing
- conduct further lien searches as needed to ensure that CCC has the sole interest in collateral used to secure marketing assistance loans
- not delay disbursement, if UCC-1 is not recorded but written verification of the UCC filing is received
- not allow requests for lock-in of the repayment rate until the marketing assistance loan has disbursed.

Note: Lien searches, lien waivers, and filing a financing statement are not required if producers immediately exchange commodity certificates for loan collateral.

3 Obtaining OGC Advice

A

State Office Action

Because States may have adopted versions of UCC, Article 9 that may vary from State to State, State Offices shall:

- continue to follow the advice of the Regional Attorney
- allow isolated exceptions to policy issued in this notice and Notice LP-1812 based upon the following:
 - written direction from the Regional Attorney
 - PSD concurrence.

Example: The Regional Attorney advises that filing UCC without a loan applicant's signature negates the double jeopardy protection afforded secured lenders by certain State laws according to P.L. 99-198, Section 1324. In this case, the State Office may direct County Offices to continue requiring that a loan applicant must sign UCC-1, as advised by the Regional Attorney.
